

IN THE COURT OF APPEALS OF IOWA

No. 7-788 / 07-0731
Filed November 29, 2007

**IN RE THE MARRIAGE OF DEBORA KAY KAMPMAN AND WAYNE ALLEN
KAMPMAN**

**Upon the Petition of
DEBORA KAY KAMPMAN,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
WAYNE ALLEN KAMPMAN,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Franklin County, Stephen P.
Carroll, Judge.

Wayne Kampman appeals the district court's award of traditional spousal support. Deborah Kampman cross-appeals the court's award of an inheritance credit and a mortgage payment credit. **AFFIRMED.**

Andrea M. Miller of Miller & Miller, P.C., Hampton, for appellant.

Michael J. Cross of Cross Law Firm, Hampton, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

In this dissolution case, Wayne Kampman appeals the district court's award of traditional spousal support to Debora Kampman and Debora cross-appeals the award of two credits to Wayne. Because we believe the court's allowances for alimony and property division were equitable under the circumstances, we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Wayne (fifty years) and Debora (forty-seven years) had been married twenty-nine years at the time of the October 25, 2006, dissolution hearing. During the marriage they had three sons, but only their seventeen-year-old son, Aaron, still lives at home. On February 15, 2007, the district court awarded joint legal custody to both Wayne and Debora, with physical care of Aaron to Wayne, and required Debora to pay \$377 per month in support until Aaron turns eighteen.

II. SCOPE AND STANDARDS OF REVIEW.

On appeal, equity dissolution cases are reviewed de novo. Iowa R. App. P. 6.4; *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). While we give weight to the district court's findings of fact, especially the credibility of the witnesses, we are not bound by such findings. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

III. MERITS.**A. Traditional Spousal Support.**

Debora was awarded traditional spousal support of \$500 per month until she or Wayne dies, she remarries, or Wayne turns sixty-six. Wayne argues

support is not appropriate because Debora is cohabitating with Mr. Sass and, in the alternative, support is inappropriate and unnecessary.

Cohabitation is evidenced by: (1) an unrelated person of the opposite sex living or residing in the dwelling house of the former spouse, (2) living together in the manner of husband and wife, and (3) unrestricted access to the home. *In re Marriage of Ales*, 592 N.W.2d 698, 702 n.1 (Iowa Ct. App. 1999). See *In re Marriage of Harvey*, 466 N.W.2d 916, 917 (Iowa 1991); *In re Marriage of Gibson*, 320 N.W.2d 822, 824 (Iowa 1982).

Debra and Mr. Sass have had a relationship since April 2006, but we agree with the district court's conclusion the relationship has not risen to the level of cohabitation. While Deborah and Mr. Sass spend four to six nights together each week, they each have their own residences. Although Debora has full access to Mr. Sass's home, he does not have full access to her home. Neither Debora nor Mr. Sass is financially supporting the other. The record does not support a finding that any of the three tests set out in *Ales* are present here.

We also reject Wayne's alternative argument concerning the appropriateness of the court's award of traditional spousal support. The statutory factors considered in awarding support were correctly identified by the trial court. See Iowa Code § 598.21A(1) (Supp. 2005). An award of spousal support is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). Spousal support

is a discretionary award, dependent upon factors such as the length of the marriage, each party's age and earning capacity, the ability of the spouse seeking support to become self-sufficient, and the relative need for support. *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). Traditional support is frequently used where the marriage is of long duration, life patterns have largely been set, and the earning potential of both parties can be predicted with some reliability. See *In re Marriage of Francis*, 442 N.W.2d 59, 62-63 (Iowa 1989).

Even though our review is de novo, we “accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (1996). The trial court ruled:

This is a marriage of substantial duration, about 29 years. During this marriage of substantial duration, Debora sacrificed her earning capacity by remaining at home with the children, allowing Wayne to substantially increase his earning capacity. Because of the duration of the marriage and because Wayne leaves the marriage with almost three times the level of Debora's earning capacity, I conclude that traditional alimony in the sum of \$500 per month is fair and equitable.

We have considered Wayne's multiple arguments in his attempt to eliminate his spousal support obligation and reject them. After our de novo review, we agree with the trial court's well-reasoned and thorough decision. We are unable to conclude the trial court's alimony award is inequitable.

B. Inherited Property.

The court granted Wayne a \$25,425 credit for assets traceable to his 2003 inheritance of \$42,000. Debora argues the court placed too high a value on the minivan asset and argues it is inequitable to award a credit for Wayne's inherited property.

First, we see no reason to reduce the court's valuation of the minivan. Second, Iowa statutory law governs the treatment of inherited property in dissolution cases:

Property inherited by either party . . . during the course of the marriage is the property of that party and is not subject to a property division . . . except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Iowa Code § 598.21(6).

The statute provides inherited property may be divided as marital property where the non-division would be unjust. The court did not award Wayne a credit for the full \$42,000 Wayne inherited. Rather, Wayne's credit was limited to traceable assets. We find the trial court's granting a credit to Wayne for the traceable portion of his inheritance to be equitable and not unjust.

C. Mortgage Payment Credit.

The court also awarded Wayne a credit for fifty per cent of the mortgage payments he made from the time of separation until the entry of the decree. Wayne remained in the family home during the parties' pre-decree separation and Aaron spent the majority of his time there as well. The payments will increase the equity in the home. The decree provides the property will be sold when Aaron graduates from high school and the proceeds divided. The division was crafted by the trial court to result in an equal division of property. Deborah cites no authority for her proposition the credit should be reduced to equal fifty per cent of the reduction in principal rather than fifty per cent of the mortgage payments. We agree with the trial court's credit award.

Costs on appeal are divided equally between the parties.

AFFIRMED.